Minute No. 30
Report – Standing Policy Committee on Property and Development, Heritage and Downtown Development – November 10, 2015

Item No. 6 Encroachment Agreement to Allow for the Use of City-Owned Right-of-Way Adjacent to 440 Don Avenue for the Purpose of Developing and Maintaining a Parking Area (Fort Rouge-East Fort Garry Ward)

COUNCIL DECISION:

Council concurred in the recommendation of the Standing Policy Committee on Property and Development, Heritage and Downtown Development and adopted the following:

1. That the proposed terms and conditions attached as Schedule "A" for an encroachment agreement in favour of Fluid Developments Inc. (hereinafter referred to as the "Licensee") for the purpose of developing and maintaining a parking area identified as "Encroachment Area" on Misc. Plan 13332/1 be approved (hereinafter referred to as the "Lands").

2. That the City enters into an encroachment agreement and such other agreements as determined necessary by the City Solicitor/Director of Legal Services to implement the intent of the foregoing.

3. That the authority be delegated to the Director of Planning, Property & Development to negotiate and approve the final terms and conditions of the encroachment agreement and such other agreements as determined necessary by the City Solicitor/Director of Legal Services, in accordance with the terms and conditions set forth in Schedule "A" and such other terms and conditions deemed necessary by the City Solicitor/Director of Legal Services to protect the interests of the City.

4. That the Proper Officers of the City be authorized to do all things necessary to implement the intent of the foregoing.

Report – Standing Policy Committee on Property and Development, Heritage and Downtown Development – November 10, 2015

DECISION MAKING HISTORY:

Moved by Councillor Orlikow,

That the recommendation of the Standing Policy Committee on Property and Development, Heritage and Downtown Development be adopted by consent.

Carried

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On November 18, 2015, the Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Property and Development, Heritage and Downtown Development and submitted the matter to Council.

STANDING COMMITTEE RECOMMENDATION:

On November 10, 2015, the Standing Policy Committee on Property and Development, Heritage and Downtown Development concurred in the recommendation of the Winnipeg Public Service and submitted the matter to the Executive Policy Committee and Council.

ADMINISTRATIVE REPORT

Title: **Proposed Encroachment Agreement to Allow for the Use of City-Owned Right-of-Way Adjacent to 440 Don Avenue for the Purpose of Developing and Maintaining a Parking Area**

Critical Path: **Standing Policy Committee on Property and Development, Heritage and Downtown Development - Executive Policy Committee - Council**

AUTHORIZATION

Author	Department Head	CFO	CAO/COO
B. Erickson	J. Kiernan	M. Ruta	M. Jack COO

RECOMMENDATIONS

1. That the proposed terms and conditions attached as Schedule “A” for an encroachment agreement in favour of Fluid Developments Inc. (hereinafter referred to as the ``Licensee``) for the purpose of developing and maintaining a parking area identified as “Encroachment Area” on Misc. Plan 13332/1 be approved (hereinafter referred to as the ``Lands``).

2. That the City enters into an encroachment agreement and such other agreements as determined necessary by the City Solicitor/Director of Legal Services to implement the intent of the foregoing.

3. That the authority be delegated to the Director of Planning, Property & Development to negotiate and approve the final terms and conditions of the encroachment agreement and such other agreements as determined necessary by the City Solicitor/Director of Legal Services, in accordance with the terms and conditions set forth in Schedule “A” and such other terms and conditions deemed necessary by the City Solicitor/Director of Legal Services to protect the interests of the City.

4. That the Proper Officers of the City be authorized to do all things necessary to implement the intent of the foregoing.

REASON FOR THE REPORT

The Encroachment By-law No. 692/74, clause 4(1)(d), states:

"Where the encroachment is of an unusual or commercial nature that it be referred to the Designated Officer of the City for the purpose of negotiating a reasonable rental and making recommendation to the Chief Administrative Officer for subsequent referral to Council."

Section 2 of The Encroachment By-law No. 692/74 provides:

""Designated Officer" means the Director of Planning, Property and Development or such other person as may be authorized in writing by the said Director to exercise some or all of the powers vested in him by this By-law".

In this regard, the Planning, Property & Development Department has negotiated Terms and Conditions of an Encroachment Agreement, in favour of Fluid Developments Inc.

EXECUTIVE SUMMARY

Application for an Encroachment Agreement for development and maintenance of a parking area adjacent to 440 Don Avenue, as specified in the History section of this report.

IMPLICATIONS OF THE RECOMMENDATIONS

The Department has determined that there are no general policy, regulatory, environmental or human resource implications to entering into an encroachment agreement shown on the attached Miscellaneous Plan No. 13332/1.

Public Works has stipulated that the parking development is not for the exclusive use of Fluid Developments Inc. and that a 2 hour maximum shall apply, which is to be enforced by the Winnipeg Parking Authority.

HISTORY

An application was submitted to the City's Zoning and Permits Branch to develop and maintain a parking area adjacent to the Lessee's holdings at 440 Don Avenue.

The application was circulated to applicable City departments and public utilities for consideration and comments. All comments and concerns have been incorporated into the signed Terms and Conditions.

The Risk Management Division of Corporate Finance reviewed the insurance requirements for this proposed encroachment and their comments have been incorporated into the Terms and Conditions.

The Planning, Property and Development Department have negotiated proposed Terms and Conditions of an Encroachment Agreement in favour of Fluid Developments Inc.

This report seeks approval of the Encroachment Agreement as negotiated.

FINANCIAL IMPACT

Financial Impact Statement

Date: October 26, 2015

Project Name:

First Year of Program **2015**

Proposed Encroachment Agreement to Allow for the Use of City-Owned Right-of-Way Adjacent to 440 Don Avenue for the Purpose of Developing and Maintaining a Parking

	2015	2016	2017	2018	2019
Capital					
Capital Expenditures Required	$ -	$ -	$ -	$ -	$ -
Less: Existing Budgeted Costs	-	-	-	-	-
Additional Capital Budget Required	$ -	$ -	$ -	$ -	$ -
Funding Sources:					
Debt - Internal	$ -	$ -	$ -	$ -	$ -
Debt - External	-	-	-	-	-
Grants (Enter Description Here)	-	-	-	-	-
Reserves, Equity, Surplus	-	-	-	-	-
Other - Enter Description Here	-	-	-	-	-
Total Funding	$ -	$ -	$ -	$ -	$ -
Total Additional Capital Budget Required	$ -				
Total Additional Debt Required	$ -				
Current Expenditures/Revenues					
Direct Costs	$ -	$ -	$ -	$ -	$ -
Less: Incremental Revenue/Recovery	688	656	656	656	656
Net Cost/(Benefit)	$ (688)	$ (656)	$ (656)	$ (656)	$ (656)
Less: Existing Budget Amounts	(688)	(656)	(656)	(656)	(656)
Net Budget Adjustment Required	$ -	$ -	$ -	$ -	$ -

Additional Comments: Revenues in 2015 consist of a one-time admin fee of $250 + annual rent of $656 pro-rated for an assumed commencement date of May 1. Revenues from 2016 onward represent the annual rental amount. Municipal tax implications are immaterial and have been excluded from this analysis.

"Original signed by"
Mike McGinn, CA
Manager of Finance

CONSULTATION

In preparing this report there was consultation with:

Legal Services Department (as to legal issues)
Risk Management, Corporate Finance
Winnipeg Parking Authority

OURWINNIPEG POLICY ALIGNMENT

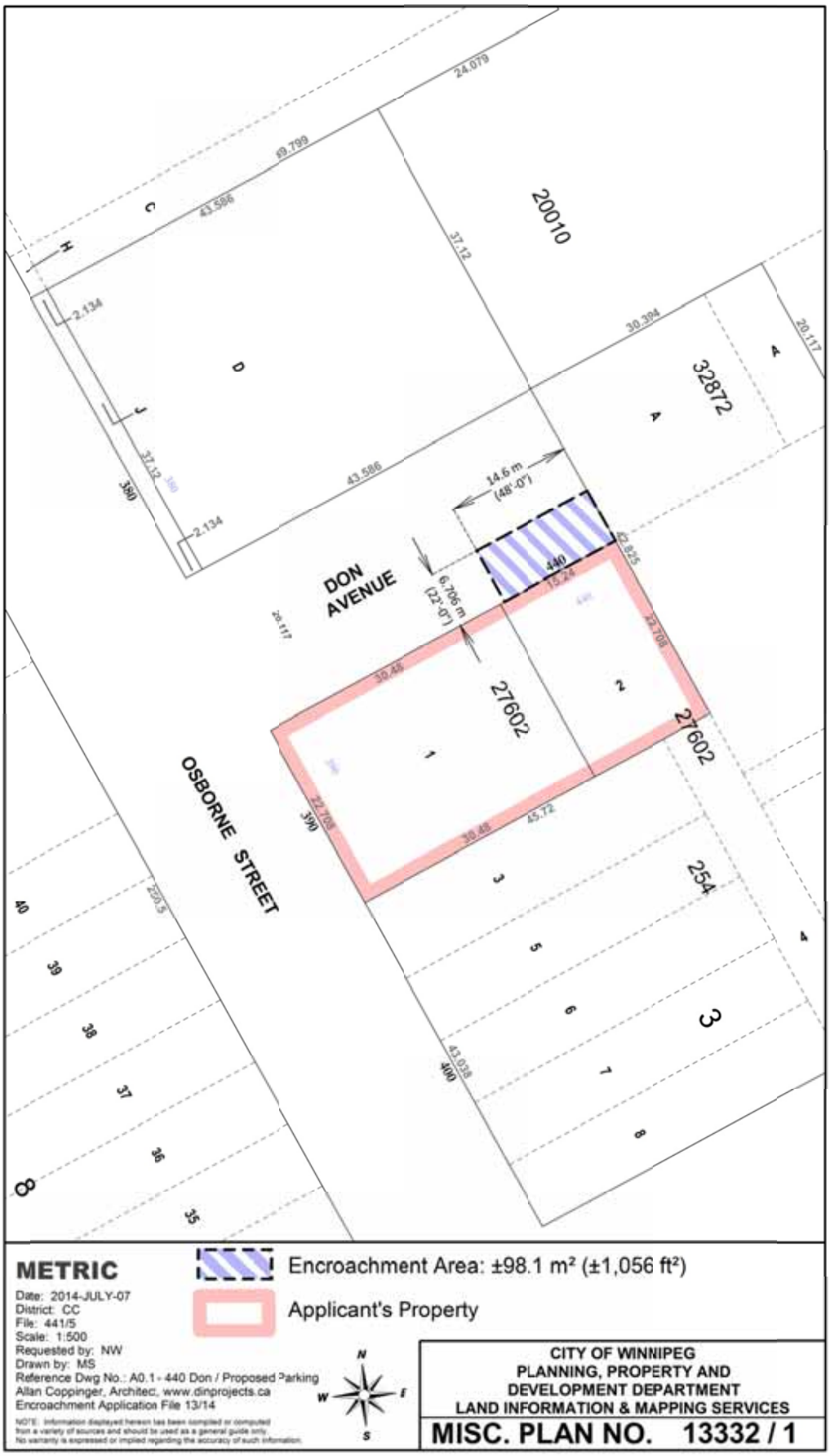
OurWinnipeg Reference:

- **Section 02** A Safe, Efficient and Equitable Transportation System for People, Goods and Services
- **Section 03-1 The Current Street System:** Arterial Streets that Primarily Provide for Through Traffic Movement and Secondarily Provide Access to Adjacent Land Use
- **Section 03-3 Commit to Traffic Operations Improvements:** Assessing the compatibility of new development and access controls with the intended function of the adjacent arterial street system

SUBMITTED BY

Department	Planning, Property and Development
Division	Municipal Accommodations
Prepared by:	Nolan Winters, Real Estate Officer
Date:	October 30, 2015
File No.:	MA2015-070

O:\Reports Directive\Municipal Accommodations\Leases\2015\MA2015-070 Proposed Encroachment Agreement to Allow for the Use of City-Owned Right-of-Way to 440 Don Avenue-Purpose of Maintaining a Parking Area.docx


20010
32872
27602
27602
254
3
DON AVENUE
OSBORNE STREET
14.6 m (48'-0")
6.706 m (22'-0")
METRIC
Date: 2014-JULY-07
District: CC
File: 441/5
Scale: 1:500
Requested by: NW
Drawn by: MS
Reference Dwg No.: A0.1 - 440 Don / Proposed Parking
Allan Coppinger, Architect, www.dinprojects.ca
Encroachment Application File 13/14
Encroachment Area: ±98.1 m² (±1,056 ft²)
Applicant's Property
CITY OF WINNIPEG
PLANNING, PROPERTY AND
DEVELOPMENT DEPARTMENT
LAND INFORMATION & MAPPING SERVICES
MISC. PLAN NO. 13332 / 1

SCHEDULE A

PROPOSED TERMS AND CONDITIONS FOR AN ENCROACHMENT AGREEMENT TO ALLOW FOR THE USE OF A PORTION OF THE DON AVENUE PUBLIC RIGHT OF WAY ADJACENT TO 440 DON AVENUE FOR THE PURPOSE OF DEVELOPING ASPHALT PARKING SPACES.

Use:	Development and Maintenance of an Asphalt Parking Area
Licensee:	Fluid Developments Inc. (hereinafter called the "Licensee")
Area:	Shown and identified as 'Encroachment Area' on Misc. Plan No. 13332/1, attached;
Term:	Annually continuing, commencing the first day of the month following approval from the City's Standing Committees and Council;
Rental:	$656.25 per annum, plus GST, computed on the basis of the fees outlined in the City of Winnipeg Encroachment By-Law No. 692/74 and amendments thereto, in event that the By-law is amended changing the fees charged for encroachments the rental paid under this agreement shall be adjusted accordingly, plus an initial administrative fee of $250.00 plus GST;
Insurance:	The Licensee shall purchase and keep in force during the full term of the agreement the following insurance coverage: Commercial general liability insurance in the amount of at least two million dollars ($2,000,000) per occurrence, such liability policy to include the City of Winnipeg as an additional insured and contain evidence of contractual liability and cross liability clause; All policies to be taken out with insurers licensed to and carrying on business in the Province of Manitoba; Deductibles shall be borne by the Licensee; The Licensee shall not cancel, materially change or cause any such policies to lapse without a minimum of thirty (30) days prior written notice to the City of Winnipeg; The Licensee shall file with the City a certificate of insurance in a form satisfactory for the City Solicitor;

The City shall have the right to alter the limits and/or coverages as reasonably required from time to time during the continuance of this lease agreement and any subsequent renewals thereof, provided that the City shall give the Licensee reasonable notice and shall request reasonable change;

Cancellation: Ninety (90) days written notice;

Conditions: That the approval of this application by the Designated Officer – Encroachments is only valid for a period of six (6) months from the date of said approval unless the applicant enters into an Encroachment Agreement with the City of Winnipeg within the stated time frame, or alternatively obtain an extension of time from the Designated Officer – Encroachments;

The Licensee understands and agrees that the 'Encroachment Area' is licensed on an "as is" basis.

The City shall have the right to access the Encroachment Area at any time (twenty four hours a day, seven days a week) by its employees or other persons acting with its authorization, with or without equipment to maintain, operate, repair, inspect or rehabilitate existing water mains, sewer lines and appurtenances located within the Encroachment Area.

The Licensee shall not assign this agreement or sublet the Lands without the prior consent of the Licensor.

That all utilities be permitted to enter the Encroachment Area for maintenance, repair or installation of services at anytime without notice to the Licensee and that any removal or relocation of existing facilities as a result of the proposed applicant will be at the expense of the Licensee.

Manitoba Hydro and/or Centra Gas Manitoba Inc. advise of the following:

(a) Manitoba Hydro has no facilities in the affected area and no easement requirements. However it must be noted that there may be gas facilities in the area;
(b) Any removal or relocation of Manitoba Hydro and/or Centra Gas Manitoba Inc. existing facilities as a result of the proposed license will be at the expense of the Licensee;

(c) Future electrical and/or gas service can be obtained from the local Manitoba Hydro District Office;

(d) If the application is revised at any time it will be necessary for Manitoba Hydro/Centra Gas to review the file to determine if their easement requirements remain the same;

(e) Prior to any digging or excavation, Manitoba Hydro and/or Centra Gas Manitoba Inc. advise the Licensee contact the Call-Before-You-Dig line at 204-480-1212;

(f) It must be noted that a Hydro plant is in the area of construction. If the property were to not remain City property an easement will be required;

On the basis that the parking lot is not for the exclusive use of 440 Don Avenue, the Public Works Department does not object to this application subject to the following:

(a) That the stalls be available to the public and be regulated as two hour parking- 9:00-17:30 Monday to Friday;

(b) The Winnipeg Parking Authority has advised that they will enforce the two hour time restriction per their normal practice. A parking citation may be issued if vehicles are in violation of the 2 hour restriction between 9:00-17:30 Monday to Friday;

(c) That the Applicant would be responsible for painting the lines delineating the parking stalls;

(d) That the City would not be responsible for snow removal or any maintenance work associated with the parking lot.

The Water and Waste Department advises of the following:

(a) According to our GIS, there is a 150 mm water main running southwest/northeast and a catch basin and lead all running under the proposed encroachment area.

(b) This water/sewer infrastructure must be protected and maintained in working order. Any damage to the water and sewer infrastructure, as a result of the

encroaching structures and/or their construction, must be repaired at the expense of the developer;

(c) If the Water & Waste Department needs to perform maintenance, repair or replace any of its water/sewer infrastructure, any damage to the parking lot and/or the other items encompassed in the proposed encroachment area will be the Licensee's responsibility, and cost, to repair;

(d) There must not be any catch basin leads and/or other private water/sewer infrastructure installed on the City owned portion of the proposed parking lot. Run-off must not be directed onto the neighboring property.

(e) ''Click before you dig Manitoba'' (http://www.clickbeforeyoudigmb.com) must be contacted to ensure that locates are performed prior to construction;

The Licensee shall be responsible for all costs, utilities, and operating expenses in connection with the use and occupation of the Encroachment Area including, but not limited to; license fees, business tax, garbage removal, snow removal, security, etc. The Licensee shall also be responsible for cleanup of litter in the immediate area as a result of use and occupation of the Encroachment Area.

The Licensee shall not assign this agreement or sublet the lands without the prior consent of the City.

The Licensee shall indemnify and save the City harmless from and against any and all claims for damages or injuries, including death that may arise from the use of the lands by the Licensee.

That if any removal, relocation or adjustment of existing MTS facilities is required, it will be at the expense of Licensee; that extreme caution be used when excavating in the vicinity of MTS buried plant and that the Licensee contact the Buried Plan Location Service at 204-941-7267, 48 hours prior to excavation for further confirmation in the field;

That if at any time during the term the City's use or requirements for the Encroachment Area reasonably necessitate the relocation and/or modification and/or removal of the Parking Area, the Licensee shall be responsible to do all things necessary to relocate and/or modify and/or remove the Parking Area as required by the City and to pay all costs and expenses associated therewith. That all applicable permits be obtained prior to any development;

That snow removal in the parking area shall be the responsibility of the Licensee;

Any other terms and conditions as are deemed necessary by the Director of the Planning, Property and Development Department, the Director of Public Works Department and by the City Solicitor/Director of Legal Services to protect the City's interests and agreed to by the Licensee, acting reasonably.

The proposed terms and conditions of the proposed Encroachment Agreement are subject to the final approval of the City's Standing Committees and Council and to the City Solicitor as to form and content.

FLUID DEVELOPMENTS INC. HEREBY AGREES TO ENTER INTO AN ENCROACHMENT AGREEMENT WITH THE CITY OF WINNIPEG FOR THE USE OF THE PROPERTY IDENTIFIED AS `ENCROACHMENT AREA` ON THE ATTACHED MISC. PLAN NO. 13332/1 AND IN ACCORDANCE WITH THE PROPOSED TERMS AND CONDITIONS AS OUTLINED HEREIN.

FLUID DEVELOPMENTS INC.

Per: _____ Oct 9/2015

DATE

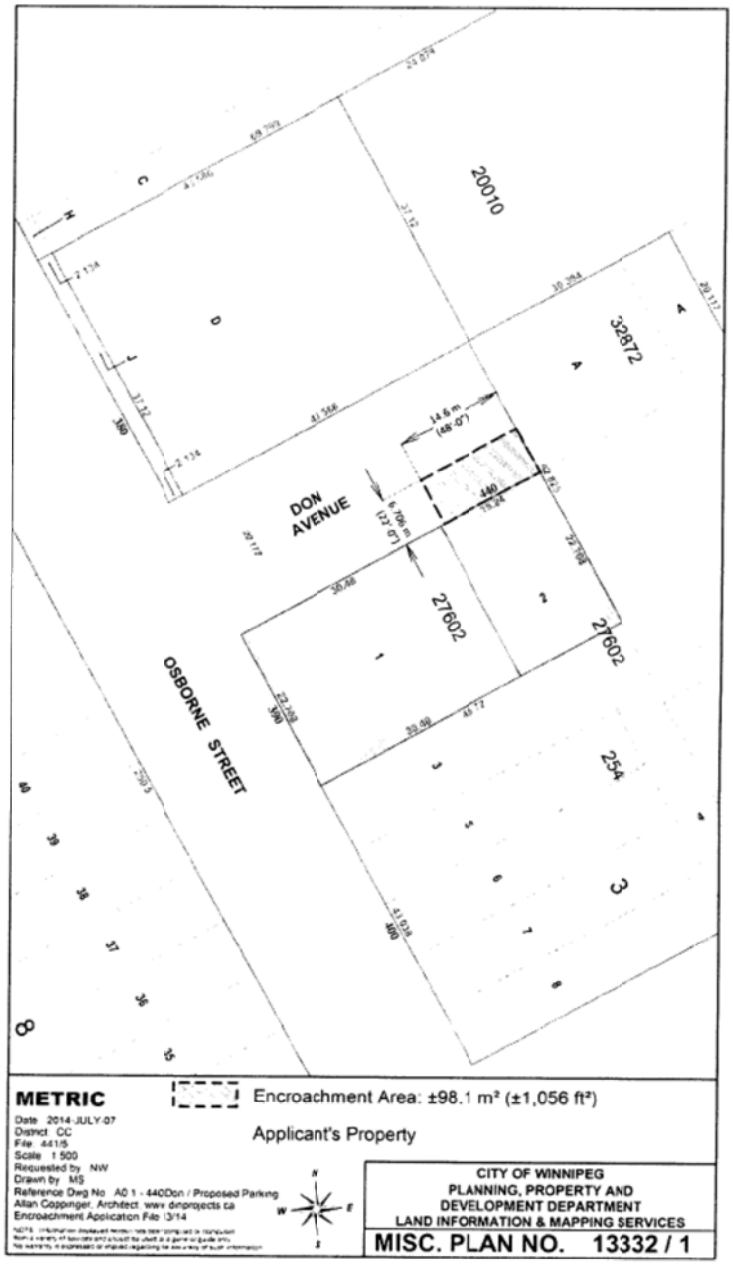
ANTONIO BAGNULO

NAME

PRESIDENT

TITLE

I/We have been authorized to bind the Corporation


20010
32872
27602
27602
254
DON AVENUE
OSBORNE STREET
14.6 m (48.0')
6.706 m (22.0')
Encroachment Area: ±98.1 m² (±1,056 ft²)
Applicant's Property
METRIC
Date 2014-JULY-07
District CC
File 441/5
Scale 1:500
Requested by NW
Drawn by MS
Reference Dwg No A0.1 - 440Don / Proposed Parking
Allan Coppinger, Architect www.dinprojects.ca
Encroachment Application File 13/14
CITY OF WINNIPEG
PLANNING, PROPERTY AND
DEVELOPMENT DEPARTMENT
LAND INFORMATION & MAPPING SERVICES
MISC. PLAN NO. 13332 / 1